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August 11, 1999

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VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
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Washington, DC 20554

AUG 11 1999

RECEIVED
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 99-153;
File Nos. BRCT-940407KF and BPCT-940630KG

Dear Madam Secretary:

Transmitted herewith, on behalf of Reading Broadcasting, Inc., is an original and six copies of its Opposition to Motion to Enlarge Issues in the above-referenced proceeding. Please be advised that the Declaration of Jack A. Linton contained therein in Exhibit A bears a facsimile signature. The original of this Declaration with original signature will be filed with the Commission after receipt.

An extra copy of the Motion is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

If should have any question please contact Thomas J. Hutton at (202) 828-1892 or the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP

Randall W. Sifers

Randall W. Sifers

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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AUG 11 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit)	

To: Administrative Law Judge Richard L. Sippel

OPPOSITION TO MOTION TO ENLARGE ISSUES

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Counsel for
Reading Broadcasting, Inc.

August 11, 1999

SUMMARY

The Mass Media Bureau, when it designated this case for hearing, on the basis of the information before it, and with full knowledge of the allegations contained in *Two If By Sea Broadcasting*, determined that Reading has met the basic threshold character qualifications to be a Commission licensee. In its *Motion to Enlarge Issues*, Adams has alleged no new facts or circumstances as to Reading's basic qualifications. In view of these circumstances, to add the issues requested by Adams Communications Corporation would require reconsideration and modification of an action taken by the Mass Media Bureau, acting on delegated authority from the Commission, with full cognizance of all the pertinent facts. Commission policy precludes the Presiding Officer from relitigating matters dealt with in the *Hearing Designation Order*.

Notwithstanding this procedural barrier, Adams, in its *Motion*, fails to meet its burden of presenting a *prima facie* showing that any character issue should be designated against Reading. There is nothing in the record to suggest a likelihood that in the future Reading will not deal truthfully with the Commission and comply with the Communications Act and the Commission's rules and policies. In light of Reading's unblemished record, Adams has failed to show that Micheal Parker's alleged misconduct at other stations in any way affects or involves WTVE(TV). Furthermore, Adams has mischaracterized the Commission's holding in *Two if By Sea Broadcasting*, misstated the Review Board's holding in *Religious Broadcasting*, misstated the status of one of Micheal Parker's applications, and omitted any

mention of a collateral proceeding in which the Bureau found that the outstanding matters in the Hartford, Connecticut proceeding were not an impediment to a grant of the assignment application.

Based on the record in this proceeding, the Presiding Officer will not find that any substantial and material questions of fact exist as to Reading's basic qualifications to be a Commission licensee. Therefore, the Presiding Officer must deny Adams' *Motion*.

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Before the
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Washington, DC 20554

In re Applications of)	MM Docket No. 99-153
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READING BROADCASTING, INC.)	File No. BRCT-940407KF
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ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit)	

To: Administrative Law Judge Richard L. Sippel

OPPOSITION TO MOTION TO ENLARGE ISSUES

1. Pursuant to Section 1.294 of the Commission's Rules, Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits its Opposition to the *Motion to Enlarge Issues* ("Motion") filed on July 15, 1999 by Adams Communications Corporation ("Adams").

2. In its *Motion*, Adams urges the Presiding Officer to add two issues to this proceeding to determine Reading's basic character qualifications to be a Commission licensee: (1) to determine whether, in light of the previously adjudicated misconduct of Micheal Parker, Reading is qualified to remain a licensee; and (2) to determine whether Micheal Parker has engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the

actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such pattern of misrepresentation and/or lack of candor on Reading's qualifications to remain a license. In short, Adams is requesting that the Commission determine whether Reading, because of its relationship with Micheal Parker, possesses the basic threshold character qualifications necessary to be a Commission licensee.

3. In order to grant Adams' *Motion*, the Presiding Officer must find, pursuant to Section 1.229 of the Commission's Rules, that, with respect to each issue, Adams has set forth specific allegations of fact, supported, where necessary, by affidavits from persons with personal knowledge, demonstrating that substantial and material questions of fact exist as to Reading's basic qualifications to be a Commission licensee. Absent such finding, the Presiding Officer must deny Adams' *Motion*.

4. The purpose for the Commission's character evaluation is to enable it to predict "an applicant's propensity to deal honestly with the Commission and comply with the Communications Act or the Commission's rules or policies."¹ This is accomplished by determining "whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies." *Character Policy Statement*, 102 FCC 2d 1179, 1209 at ¶55.

¹ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209 at ¶21 (1986), *modified*, 5 FCC Rcd 3252 (1990), 6 FCC Rcd 3448 (1991), 7 FCC Rcd 6564 (1992) ("*Character Policy Statement*").

5. Not only does Adams fail to make the requisite showing, but Adams also conveniently disregards a collateral decision by the Mass Media Bureau which determined that consideration of the alleged misconduct is limited to consideration in a yet-to-be-scheduled hearing in the Hartford, Connecticut proceeding, unless it can be shown that the alleged misconduct affects the day-to-day operations of other stations. In light of Reading's unblemished record, and the lack of any allegations otherwise, Adams has failed to show that Parker's alleged misconduct at other stations has in any way affected the day-to-day operations of WTVE(TV).

Accordingly, the Presiding Officer must deny Adams' *Motion*. See *Intercontinental Radio, Inc.*, 98 FCC 2d 608, 612-13 (Rev. Bd. 1984) (individual stations have different broadcast histories and policies; a multistation owner found to have engaged in misconduct at one station – or even more than one – should lose all its licenses only if the record shows a pervasive unwillingness or inability to meet the basic responsibilities of a licensee).

6. Although Adams attempts to make Micheal Parker synonymous with Reading for purposes of its *Motion*, Adams has shown no ownership interest by Reading or any of its other principals in Mr. Parker's other broadcast stations or applications. Mr. Parker holds less than a 50% ownership and voting interest in Reading and the other stockholders and directors take an active role in Reading's activities. In fact, in August of 1997, Reading's Board of Directors terminated Micheal Parker as President of Reading and cancelled his management agreement in connection with a dispute over corporate management. He resumed his position

as President of Reading and the management agreement was reinstated in November of 1997, by vote of the Board of Directors. See Exhibit A. Adams' unsupported assumption that Reading is a pawn of Micheal Parker is simply erroneous.

7. Adams has failed to meet its burden of presenting a *prima facie* showing that any issue should be designated against Reading. The Mass Media Bureau had all the relevant information before it when it designated the case for hearing and it did not find a material question existed with respect to Reading's basic qualifications. This action is consistent with Commission precedent and with the collateral Mass Media Bureau decision omitted from the Adams *Motion*. Adams has failed to allege any transgression committed by Reading, or made any claim that Micheal Parker, as a principal at Reading, has repeated any of the prior transgressions as an officer or stockholder of Reading. Accordingly, the Presiding Officer must deny Adams' *Motion*. In short, it is unnecessary, in this case, to consider Reading's basic character qualifications to be a Commission licensee.

I. The ALJ Lacks Authority To Grant Adams' *Motion* Because The Commission Was Cognizant Of Micheal Parker's Alleged Misconduct When It Issued The Hearing Designation Order And Adams Has Not Set Forth New Facts Or Circumstances Regarding Micheal Parker's Character.

8. The Administrative Law Judge ("ALJ") acts on motions to enlarge issues pursuant to delegated authority.² In its *Report and Order on Revised Procedures for the Processing of Contested Broadcast Applications*, 72 FCC 2d 202, 216-217 at

² See Sections 1.241 and 1.243(k) of the Commission's Rules.

¶¶43-46 (1979), the Commission reiterated Commission policy on post-designation modification of hearing issues. In that *Report and Order*, the Commission adopted a simplified, streamlined designation process and established the parameters of authority for the ALJs to handle all post-designation motions seeking to modify, enlarge, or delete the issues designated for hearing. In the absence of demonstrated showings of information or data which were not before the Commission at the time of designation, and in the interest of precluding unnecessary relitigation of matters dealt with in the HDO, the ALJs would observe that the Commission's staff had reviewed and considered the application, its amendments, and any pleadings filed, and accordingly, would be bound by that analysis.

9. Some commenters in that proceeding argued that the Commission's staff should continue the practice of preparing a lengthy Memorandum Opinion and Order that contained a reasoned analysis regarding particular matters, and where there was no reasoned analysis presented in the designation order, the parties should be permitted to request issues before the ALJ. Although the Commission agreed that the designation order should fully discuss the bases and rationale for rejecting an issued requested, in the interest of brevity, the Commission determined that with regard to findings indicating compliance with Commission regulations and policies: "We would expect that a thorough staff review of the application would permit the making of findings indicating those areas where the applicant had made a satisfactory showing of compliance with Commission regulations and policies and so concluding in the designation order." *Id.* 217 at ¶46.

10. On March 11, 1997, pursuant to Section 1.65 of the Commission's Rules, then counsel for Reading filed with reference to Reading's subject renewal application, a copy of the Commission's decision in *Two If By Sea Broadcasting*, 12 FCC Rcd 2254 (1997), the principal source for Adams' allegations. See Exhibit B.

11. The *Hearing Designation Order* for this proceeding, DA 99-865, released May 6, 1999, clearly states, in relevant part —

1. The Commission, by the Chief, Video Services Division, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration: (a) the application of Reading Broadcasting, Inc. (RBI) for renewal of license of station WTVE(TV), Channel 51, Reading, Pennsylvania;

2. Based upon our review of the pending applications, the applicants appear to be qualified to construct and/or operate as proposed. . . .

3. ACCORDINGLY, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned license renewal application of WTVE(TV) and the application for a construction permit for a new station filed by Adams, ARE DESIGNATED FOR HEARING in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, on the following issues;

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which if either of the applications should be granted.

12. Therefore, pursuant to the Hearing Designation Order for this proceeding, the record shows that the Mass Media Bureau did, in fact, review Reading's renewal application file when determining which issues to specify for

consideration, and such file contained a copy of the *Two If By Sea Broadcasting* decision, the principal source for Adams' allegations. Thus, in declining to designate a character issue against Reading when it designated the case for hearing, the only reasonable conclusion that can be drawn is that the Mass Media Bureau, on the basis of the information before it, and with consideration of the allegations contained in *Two If By Sea Broadcasting*, found no reason to specify an issue regarding Reading's basic character qualifications.

13. By stating in the Hearing Designation Order that: "Based upon our review of the pending applications, the applicants appear qualified to construct and/or operate as proposed," the Bureau has determined that Reading has met the basic threshold character qualifications necessary to be a Commission licensee. Moreover, Adams has alleged no new facts or circumstances to support its *Motion*. Rather, it has raised therein essentially the same matters set forth before the Mass Media Bureau in Reading's pre-designation amendment. In view of these circumstances, to add the issues requested by Adams would require reconsideration and modification of an action taken by the Mass Media Bureau, acting on delegated authority from the Commission, with full cognizance of all the pertinent facts. As explained above, Commission policy precludes the Presiding Officer from taking such action. Therefore, Reading respectfully requests that the Presiding Officer strictly enforce the provisions of the Commission's policy on post-designation modification of hearing issues and deny Adams' *Motion*.

II. The Commission Did Not Mandate in *Two If By Sea Broadcasting* the Resolution of Character Issues Regarding Micheal Parker Before Action Can Be Taken on Reading's Renewal Application.

14. In its *Motion*, Adams states that “the full Commission has mandated [pursuant to its decision in *Two if By Sea Broadcasting*] that applications in which Mr. Parker is the dominant principal may not be granted until his previously adjudicated misconduct has been considered.” *Motion* at ¶ 9. Adams has grossly mischaracterized the Commission’s holding in *Two If By Sea Broadcasting*. In fact, the Commission has issued no such mandate. Moreover, Adams’ assertion that applications in which Micheal Parker is involved may not be granted until his previously adjudicated misconduct has been considered is directly contradicted by a subsequent Mass Media Bureau decision that Adams omitted from its filing.

A. Background of *Two If By Sea Broadcasting*

15. Micheal Parker was an officer, the sole director and the sole shareholder in Two If By Sea Broadcasting Corporation (“TIBS”). In December, 1996, TIBS filed a letter requesting that the Commission immediately grant its application for consent to the assignment of license of WHCT-TV, Hartford, Connecticut from Martin W. Hoffman, Trustee-in-Bankruptcy (“Trustee”) to TIBS. (File No. BALCT-930922KE). In September, 1993, the Trustee had filed the application to assign the Hartford station to TIBS.

16. Shurberg Broadcasting of Hartford, Inc. (“Shurberg”), who is the adverse party referred to in Adams’ *Motion* (*Motion* at ¶ 7) and incidentally is represented by the same counsel that represents Adams, filed a Petition to Deny

that assignment application in which it argued, *inter alia*, that Micheal Parker misrepresented facts and lacked candor concerning the nature of his past problems with the Commission in connection with certain Commission filings over a number of years. *Two If By Sea Broadcasting*, 12 FCC Rcd 2254, 2255.

17. The Commission stated that its reason for denying the TIBS request for emergency relief was because “TIBS has provided no basis for the Commission to grant its request.” *Two If By Sea Broadcasting*, 12 FCC Rcd 2254, 2256. The Commission also found, *inter alia*, that Shurberg had presented it with substantial and material questions of fact with respect to TIBS/Parker’s qualifications to be the licensee of the Hartford facility. As the Commission noted, Section 309 (d)(2)-(e) of the Communications Act provides that if a substantial and material question of fact is presented to the Commission, the application shall be designated for hearing.

18. Therefore, in *Two If By Sea Broadcasting*, with regard to TIBS/Micheal Parker, the Commission decided only that (1) the TIBS request for emergency relief was denied, and (2) because Shurberg had presented the Commission with allegations of material fact regarding TIBS/Parker’s qualifications, it was precluded from acting on the Hartford, Connecticut assignment application without a hearing. Most importantly, the Commission did not mandate, as Adams alleges, nor, based on the language of that decision and subsequent Commission action, can it reasonably be inferred, that “applications in which Mr. Parker is the dominant principal may not be granted until his previously adjudicated misconduct has been considered.”

B. The Commission Has Already Determined That Consideration Of Parker's Alleged Misconduct Is Only Restricted To Consideration Of Whether TIBS/Parker Is Qualified To Be A Commission License At The Hartford Station.

19. Although a Hearing Designation Order ("HDO") for the Hartford station was issued, the Commission determined that it was not necessary, in that HDO, to specify issues with respect to TIBS/Parker's basic qualifications to be a Commission licensee. *Martin W. Hoffman, Trustee-in-Bankruptcy, Memorandum Opinion and Order & Hearing Designation Order*, 12 FCC Rcd 5224, n.1 (1997). In part, this was because the assignment application proposing the sale of the Hartford station to TIBS has been held in abeyance pending the resolution of other unrelated matters.

20. However, it is significant that the HDO that was issued did not designate any of the stations commonly held by Parker. Under policies currently in force and then in place, the Commission makes a case-by-case determination of whether an existing licensee, designated for hearing on character issues with respect to one license, may buy or sell other licenses, or have other authorizations renewed. *See Character Policy Statement*, 102 FCC 2d 1179, 1223-25 at ¶¶92-94; *Transferability of Broadcast Licenses*, 53 Rad. Reg. 2d (P&F) 126 (1983). As a general rule, the Commission has required the buyer as well as the seller to be qualified before granting its consent to the transfer of broadcast licenses. *See Roy M. Speer*, 11 FCC Rcd 14684, *aff'd in part* 11 FCC Rcd 18393 (1996) *citing Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1984); *Character Policy Statement*, 102 FCC 2d 1179, 1224 at ¶93, *citing James S. Rivers*, 48 FED. REG. 8585 (1983).

21. When the Commission finds conduct that is so egregious that it may disqualify an applicant from holding other broadcast interests, the Commission will designate all the stations at the time of designation of the station whose qualifications are primarily at issue. As the Commission explained “[i]f the charges are serious enough to possibly affect the transferability of the multiple owner’s other stations, then by designating all the stations, we afford licensees faced with qualifications questions a better opportunity to defend themselves at the earliest practicable date.” *Character Policy Statement*, 102 FCC 2d 1179, 1224 at ¶93. This policy is grounded on the need to deter licensee misconduct. *Roy M. Speer*, 11 FCC Rcd 14684 at ¶3. If the Commission has not as an initial matter found that the allegations under consideration involve conduct likely to impact the day-to-day operations of other stations, then the Commission does not allow the outstanding matter to impede or defer action on transactions involving other commonly owned stations. *See Character Policy Statement*, 102 FCC 2d 1179, 1225 at ¶94. Of course, such action does not affect the Commission’s discretion to take action against any commonly owned station, should the ultimate resolution of the inquiry reveal that the applicant does not possess the basic qualifications to remain a licensee. *Id.*

22. The fact that the Commission, in neither *Two If By Sea Broadcasting* nor in the subsequent HDO, chose to place any restrictions on other licenses in which Micheal Parker had ownership interests, provides evidence that the Commission deemed the misconduct alleged in the Hartford proceeding to be

limited to that proceeding and to not involve the day-to-day operations of other stations.

23. In fact, the Mass Media Bureau, shortly after the release of the *Two If By Sea Broadcasting* decision, reached exactly that conclusion. In May 1997, the Bureau consented to the application to assign the licenses for station WHRC(TV) in Norwell, Massachusetts, a station in which Micheal Parker was a principal. See *Letter to Alan C. Campbell*, dated May 22, 1997. See Exhibit C. In that *Letter*, the Chief of the Video Services Division analyzed the *Two If By Sea Broadcasting* decision and concluded, “we do not find that the outstanding matter relating to Mr. Parker is an impediment to a grant of the subject assignment application.” *Id.* The predicate for the Bureau’s decision was that the misconduct alleged in *Two If By Sea Broadcasting* did not appear to bear upon the operation of other stations. See *Straus Communications, Inc.*, 2 FCC Rcd 7469 (1987) (an allegation of misconduct at one station will only defer Commission action where “there is a substantial likelihood that the allegations warranting designation of one station for hearing bear upon the operations of other stations.”).

24. Thus, Commission officials familiar with the misconduct alleged in the *Two If By Sea Broadcasting* proceeding and raised by Adams in its *Motion*, fully considered Parker’s alleged prior misconduct with respect to the Norwell, Massachusetts assignment application, and determined that the outstanding matters relating to Micheal Parker which were raised in the Hartford proceeding, absent further showing, do not involve the day-to-day operations of other stations in

which Micheal Parker holds an interest, and therefore, do not impede Commission action on other applications involving Micheal Parker.

25. The Bureau's action is known to Adams' counsel, who have raised the very same allegations in multiple fora.³ Counsel for Adams was served notice of the Bureau's action on the Norwell, Massachusetts assignment application in response to Adams' petition to deny the consent to assignment application to assign the Dallas international radio station, call sign KAIJ (File No. BALIB-970912VT), from an applicant in which Micheal Parker was the principal. See Exhibit E. It appears that Adams omitted the Bureau's action in the Norwell, Massachusetts assignment application from its argument because Adams cannot explain why the Presiding Officer in this case should depart from that decision. Based on the Bureau's

³ In re Applications of Desert 31 Television, Inc., Assignor, and Peoria Broadcasting Services, Inc., Assignee, For consent to the assignment of the license of International Broadcast Station KAIJ, Dallas, Texas (File No. BALIB-970912VT), *Petition to Deny or Dismiss Applications*, filed November 17, 1997, by Alan Shurberg d/b/a Shurberg Broadcasting of Hartford; In re Applications of Desert 31 Television, Inc., Assignor, and Peoria Broadcasting Services, Inc., Assignee, For consent to the assignment of the license of International Broadcast Station KAIJ, Dallas, Texas (File No. BALIB-970912VT), *Petition to Deny, Dismiss or Hold in Abeyance*, filed November 17, 1997, by Adams Communications Corporation; In re Applications of Astroline Communications Company Limited Partnership, Proposed Assignor, and Two If By Sea Broadcasting Corporation, Proposed Assignee, For Consent to the Assignment of License of Station WHCT-TV, Hartford, Connecticut (File No. BPCT-930922KE), *Opposition to Petition for Reconsideration*, filed March 21, 1997, by Alan Shurberg d/b/a Shurberg Broadcasting of Hartford; In re Applications of Astroline Communications Company Limited Partnership, Proposed Assignor, and Two If By Sea Broadcasting Corporation, Proposed Assignee, For Consent to the Assignment of License of Station WHCT-TV, Hartford, Connecticut (File No. BPCT-930922KE), *Formal Opposition To, and Motion To Strike, Letter Request Seeking Emergency Relief*, filed December 27, 1996, by Alan Shurberg d/b/a Shurberg Broadcasting of Hartford; See Exhibit D.

decision in the Norwell assignment application, it logically follows that because the misconduct alleged in *Two If By Sea Broadcasting* does not involve the day-to-day operations of Reading's station, WTVE(TV), Reading is fully qualified to be a Commission licensee, and therefore, the outstanding matter relating to Micheal Parker does not impede Reading's renewal application.

26. In view of long-standing Commission policy and other Commission decisions, the Bureau's conclusion in the Norwell, Massachusetts proceeding comes as no surprise. First, the Commission has long held that there should be no presumption that misconduct at one station is necessarily predictive of the operation of a licensee's other stations. *See Character Policy Statement*, 102 FCC 2d 1179, 1223 at ¶92. This is based on the Commission's long-standing position, that, with regard to multiple owner misconduct, there is a presumption that "the apparently proper operation of other broadcast stations is evidence of the licensee's capacity to operate broadcast stations in the public interest." *Id.*; *Black Citizens for a Fair Media*, 719 F.2d 407, 416 (1983). In the instant case, no allegations have been made regarding any improper station operation by Reading. Notwithstanding Micheal Parker's past problems, Adams has utterly failed to demonstrate that any misconduct has occurred or is likely to occur at WTVE(TV).

27. Second, the Commission has affirmed that, "[i]f the Commission has not as an initial matter found that the allegations under consideration involve conduct likely to impact the future operations of other stations, there generally appears to be no reason to condition or defer such transactions." *Character Policy*

Statement, 102 FCC 2d 1179, 1224 at ¶94. Therefore, in the absence of any action, no restrictions are to be presumed.

C. In *Religious Broadcasting* The Review Board Only Affirmed the ALJ's Finding to Refuse to Award Integration Credit; The Review Board Did Not Affirm The ALJ's Decision To Disqualify For A Real-Party-In Interest Issue.

28. Adams bases its allegations as to Micheal Parker's basic qualifications in part on the decision reached in *Religious Broadcasting Network*, 2 FCC Rcd 6561 (ALJ 1987) ("*Initial Decision*"), modified, 3 FCC Rcd 4085 (Rev. Bd. 1988) ("*Review Board*"). Adams misstates the Review Board's decision in this proceeding. Reading also hereby acknowledges that the Commission, in *Two If By Sea Broadcasting*, when referring to the Review Board's decision in *Religious Broadcasting*, adopted Adams' misstatement in *dicta*.⁴ That misstatement is explained below.

⁴ The Commission, in finding that Shurberg had raised basic qualification issues against TIBS, stated, in *dicta*, "[f]or example, in one instance an administrative law judge disqualified an applicant in a comparative hearing for a new television station after finding Parker to be an undisclosed principal in the applicant. [] The Review Board upheld the disqualification, characterizing the application as a "travesty and a hoax." *Two If By Sea Broadcasting*, 12 FCC Rcd 2254, 2257 (internal citations omitted). However, it is significant that the Commission, in *Two If By Sea Broadcasting*, was not ruling on the merits of Shurberg's allegations against Micheal Parker. Because of procedural limitations, the Commission only could go so far as to find that Shurberg had presented questions of fact which, under the Act, required that the application be designated for hearing. The findings with regard to the merits of Shurberg's allegations only can be determined at a hearing. Therefore, even though the Commission made the aforementioned statement, that statement is not dispositive as to what the Review Board affirmed in *Religious Broadcasting*. Moreover, in filing applications and amendments in 1992, Micheal Parker could not have foreseen that the Commission later would adopt a characterization that departs from the actual holding in *Religious Broadcasting*.

29. The *Religious Broadcasting* proceeding involved twenty mutually exclusive applications to construct a new television station in San Bernardino, California. One of the applicants in that proceeding was San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in which Micheal Parker was found to be a real party-in-interest. *Initial Decision* at ¶61. The applications in that proceeding were designated for hearing in September, 1983. *Initial Decision* at ¶2 citing *Hearing Designation Order*, Mimeo No. MM 6506, released September 20, 1983. The ALJ designated the following additional issue with respect to SBB:

To determine whether Michael Parker is a real party-in-interest in the San Bernardino Broadcasting Limited Partnership application and, if so, the effect thereof on the applicant's qualifications to be a Commission licensee.

Initial Decision at ¶2.

30. The ALJ determined that Micheal Parker was the real party-in-interest in SBB based on the findings, *inter alia*, that Micheal Parker: (1) organized SBB's business structure, (2) secured the original financing for the station, (3) maintained SBB's books and records, (4) had possession of SBB's checkbook, (5) transferred his ownership interest to relatives and remained in control of the application by means of a consulting agreement and by his direct and indirect control over SBB's finances, and (6) disposed of his equity interest in SBB because he believed that it impacted negatively on SBB's application. *Initial Decision* at ¶¶54-58. Although the ALJ found that SBB's application was a "sham" and a "hoax," similar language was used in many cases where there were no disqualifying

issues, but rather just a denial of integration credit. *See* cases cited in paragraph 36 *infra*.

31. The ALJ concluded that because Micheal Parker was a real party-in-interest in SBB, SBB was disqualified. Fearing that SBB's disqualification would be found too harsh on review, the ALJ also concluded, as a fallback position, that SBB was not entitled to any integration credit on a comparative basis. As stated in the Initial Decision:

60. The evidence of record requires a negative finding against SBBLP on the real party-in-interest issue, mandating SBBLP's disqualification. In the event, however, that such a penalty is found to be too harsh on review, the Presiding Judge reaches the additional conclusion that SBBLP is not entitled to any integration credit for its proposal to integrate Ms. Van Osdel. Her past behavior in relying virtually totally on others makes it very unlikely that she will exercise control over the affairs of the station to a degree that would entitle her proposal to an integration credit.

Initial Decision at ¶60.

32. SBB, along with eleven other applicants, filed exceptions to the ALJ's Initial Decision. **Accordingly, pursuant to Section 1.276(d) of the Commission's Rules, the ALJ's *Initial Decision* never became effective.** *See* 47 C.F.R. § 1.276(d); *Initial Decision*, 2 FCC Rcd at 6595 n.19. **Upon review, the Review Board only affirmed the part of the *Initial Decision* which refused to award integration credit to SBB.** As the *Review Board* decision states, in relevant part: "We affirm, *con brio*, the ALJ's refusal to award 'integration' credit to SBB." *Review Board* at ¶16. Adams disingenuously claims that the ALJ's disqualification holding was affirmed "*con brio*," carefully splicing out the reference

to SBB's integration credit. *Motion* at ¶4. Contrary to Adams' assertion, the Review Board did not affirm the ALJ's disqualification of SBB on the real party-in-interest issue.⁵

33. Further proof that the Review Board's decision affirmed no more than the ALJ's denial of integration credit to SBB is found by comparing the respective Ordering Clauses of the two decisions. The relevant ordering clauses of the *Initial Decision* state:

324. IT IS FURTHER ORDERED that San Bernardino Broadcasting Limited Partnership and Jose M. Oti d/b/a Sandino Telecasters ARE FOUND NOT TO BE QUALIFIED to be licensees of the Federal Communications Commission and their applications [] and [] ARE DISMISSED. [docket and file numbers omitted].

325. AND IT IS FURTHER ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission review this Initial Decision on its own motion . . . the application of Channel 30, Inc. . . . for a construction permit for a new commercial television station to operate on Channel 30, San Bernardino, California IS GRANTED, and the applications of [the other remaining mutually exclusive applicants in the proceeding] ARE DENIED. [docket and file numbers omitted].

Conversely, the relevant ordering clause of the *Review Board* decision states:

63. IT IS FURTHER ORDERED, That the Application of Channel 30, Inc. . . . for authority to construct a new television station on Channel 30 at San Bernardino, California IS

⁵ We also note that the decision in *Doylan Forney*, 3 FCC Rcd 6330 (Rev. Bd. 1988), provides further evidence that the Review Board in *Religious Broadcasting* only denied integration credit for, but did not disqualify, SBB. The Review Board in *Doylan Forney*, which is the same Review Board that decided *Religious Broadcasting*, noted that "the Board affirmed the presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit." *Id.* at n.1.

GRANTED; and that the applications of Religious Broadcasting Network [], Solano Broadcasting Limited [], A&R Broadcasting Company, A Limited Partnership [], Buenavision Broadcasters [], SSP Broadcasting, A Limited Partnership [], Good News Broadcasting Network [], Sandino Telecasters [], Inland Empire Television [], Television 30, Inc. [], San Bernardino Broadcasting, Limited Partnership [], All Nations Christian Broadcasting, Inc [] ARE DENIED. [file numbers omitted].

34. There is a significant distinction between the ordering clauses of the two decisions. In the *Initial Decision*, SBB and another applicant were disqualified, and therefore, both applicants were dismissed from the proceeding. In contrast, in the *Review Board* decision, for comparative reasons, the applications of SBB and the other parties were denied.

35. The Commission's Rules and decisions make a clear distinction between applications that are disqualified and dismissed, and applications that are denied. A "disqualification" is a sanction imposed by the Commission when it finds that a party has made intentional false statements in the course of the hearing process, *see e.g., Nick J. Chaconas*, 28 FCC 2d 231 (1971), *recon. denied*, 35 FCC 2d 698 (1972), *aff'd without opinion*, 486 F.2d 1314 (D.C. Cir. 1973) or when the Commission finds gross lack of truthfulness and candor, *see e.g., RKO General, Inc. v. FCC*, 670 F.2d 215, 225 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1974 (1982). *See also Section 1.1216* of the Commission's Rules. The Commission will dismiss the application of a party that has been sanctioned with disqualification. A dismissed applicant has no standing in the proceeding after dismissal. *See Roxanne Givens*, 6 FCC Rcd 873, 873 n.2 (Rev. Bd. 1991). Unless the disqualified applicant can otherwise show cause why its interest in the proceeding should not be dismissed, it

is barred from further participation in the proceeding. A party whose application has been denied can continue to participate actively on issues in the proceeding until it formally asks to be dismissed from the proceeding. *See Maria M. Ochoa*, 9 FCC Rcd 4789 at ¶6 (1994), *citing Capital City Broadcasting Co.*, FCC 93M-747, (released December 13, 1993) (internal citations omitted).

36. The Review Board's decision to only deny integration credit to SBB in *Religious Broadcasting* is consistent with a long line of Commission decisions holding that a denial of integration credit does not implicate that applicant's basic qualifications. *See, e.g., Evansville Skywave, Inc.*, 7 FCC Rcd 1699 (1992), 1700 at ¶14 (holding that an applicant's failure to meet its burden of showing that its integration proposal is reliable does not, standing alone, establish that the applicant has committed disqualifying misconduct) and at ¶¶15-16 (a finding that a "sham" proposal is unreliable does not necessarily raise an issue of basic qualification)⁶; *Royce International Broadcasting*, 5 FCC Rcd 7063, 7064 at ¶8 (1990) ("To the extent an applicants' conduct or intentions are demonstrably at odds with the described ownership structure," the proposal will be deemed unreliable); *Omaha Channel 54 Broadcasting Group*, 3 FCC Rcd 870 at ¶8 (Rev. Bd. 1988) (Review Board *citing Tequesta Television, Inc.*, 2 FCC Rcd 7324 at ¶6 (1987) "[t]he ineluctable conclusion must be drawn that, under current Commission precedent,

⁶ The Commission has discouraged the use of the term "sham" because of the term's ambiguity and potential for confusion. The Commission stated that it is more appropriate to analyze integration proposals under a comparative issue in terms of their overall reliability. *Evansville Skywave*, 7 FCC Rcd 1699, 1700 at ¶ 16.